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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1095

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,

Appellant,

v.

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT LAVINE

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INDEX.

PAGE

Opinion Below 1

Jurisdiction 2

Statute Involved of the State of New York 2

Regulation Involved of the Secretary of Health, Education and Welfare 3

Statutes of the United States 4

Questions Presented 4

Statement of the Case 5

Summary of Argument 12

Point I. It is the responsibility of parents, not the State, to support their children. The decision below erroneously reverses this basic concept by attributing to Congress an unexpressed intent to do so 13

A. The Notice to Law Enforcement Officers (NOLEO) Amendment of 1950 (42 U.S.C. § 602(a)(11)) did not shift parental support responsibilities from parents to the State.... 16

B. The 1967 Amendments to the Social Security Act (42 U.S.C. § 602(a)(17)(18)(21)(22)) did not shift parental support responsibilities from parents to the State 22

C. 42 U.S.C. § 602(a)(7) requires that the States in determining need take into consideration the income and resources of a child or relative claiming AFDC. In fulfilling such requirement, the State must take into account "any" income and resources. The provisions of section 602(a)(7) did not shift parental support responsibilities from parents to the State. On the contrary, such provisions are recognition of such responsibilities and place them upon the parents where they belong.... 32

PAGE

Point II. New York Social Services Law § 101-a(2)(3) operates within the legitimate sphere of State AFDC administration and serves legitimate State purposes. The State statute is valid even if it is held to create a condition for assistance..... 38

Conclusion 45

Appendix A—Statutes of the United States 46

Appendix B—Brief in the District Court Concerning "Substantiality" 49

CITATIONS.

CASES:

Charleston v. *Wohlgemuth*, 332 F. Supp. 1175 (D.C. Penn., 1971) affd. 405 U.S. 970 (1972) 41
Doe v. *Gillman*, 347 F. Supp. 482 (N.D. Iowa, 1972) modified 479 F. 2d 646 (8th Cir., 1973), petition for certiorari pending *sub nom. Burns* v. *Doe*, No. 73-406 40
Doe v. *Harder*, 310 F. Supp. 302 (D.C. Conn., 1970), app. dis. for want of jurisdiction, 399 U.S. 902 (1970) 40
Doe v. *Lavine*, 347 F. Supp. 357 (S.D.N.Y., 1972) 40
Doe v. *Norton*, 365 F. Supp. 65 (D.C. Conn., 1973) 36
Doe v. *Shapiro*, 302 F. Supp. 761 (D.C. Conn. [1969], app. dism. 396 U.S. 488 [1970]), rehearing den. 397 U.S. 970 (1970) 5, 36, 40, 42
Doe v. *Swank*, 332 F. Supp. 61 (N.D. Ill., 1971) affd. *sub nom. Weaver* v. *Doe*, 404 U.S. 987 (1971) 39
Dunbar v. *Dunbar*, 190 U.S. 340 (1903) 14
Fite v. *Miller*, 280 App. Div. 12 (4th Dept., 1952) 14
Ginberg v. *New York*, 390 U.S. 629 (1968) 15
Glona v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968) 5
Gomez v. *Perez*, 409 U.S. 535 (1973) 15
James v. *Goldberg*, 302 F. Supp. 478 (1969) 37
Jefferson v. *Hackney*, 406 U.S. 535 (1972) 39, 41
King v. *Smith*, 392 U.S. 309 (1968) 5, 26, 38, 39
Landes v. *Landes*, 1 N Y 2d 358, app. dism. 352 U.S. 948 (1956) 14
Lavine v. *Shirley*, 365 F. Supp. 818 2
Lavine v. *Shirley*, 409 U.S. 1052 [No. 72-582] 5

PAGE

Levy v. *Louisiana*, 391 U.S. 68 (1968) 5
Lewis v. *Lavine* (Dkt. No. 72-CV-4249 [S.D.N.Y.]) 11
Lewis v. *Martin*, 397 U.S. 552 (1970) 38
Meyers v. *Juras*, 327 F. Supp. 759 (D. Or., 1971) affd. 404 U.S. 803 (1971), reh. den. 404 U.S. 961 39
New York State Department of Social Services v. *Dublino*, 413 U.S. 405 (1973) 15, 26, 39, 41, 42, 43, 44
Prince v. *Massachusetts*, 321 U.S. 158 (1943) 15
Saiz v. *Hernandez*, 340 F. Supp. 165 (D. New Mexico [1972]) 36
Shapiro v. *Thompson*, 394 U.S. 618 (1969) 26
Stanley v. *Illinois*, 405 U.S. 645 (1972) 15
Strecker v. *Strecker*, 10 A D 2d 312 (1st Dept. [1960]). 14
Taylor v. *Martin*, 330 F. Supp. 85 (U.S.D.C, N.D. Calif. 1971), affd. *sub nom.*, *Carleson* v. *Taylor*, 404 U.S. 980 (1971) 39
Woods v. *Miller*, 318 F. Supp. 510 (W.D. Pa., 1970) 40
Wyman v. *James*, 400 U.S. 309 (1971) 5, 23, 36, 41, 42

STATUTES OF THE UNITED STATES:

Social Security Act § 402(a)(17) 30
28 U.S.C. § 1253 2
28 U.S.C. § 1331 ..... 6, 7, 10
28 U.S.C. § 1343 ..... 6, 7, 10
42 U.S.C. § 602(a)(7) 4, 12, 16, 32, 33, 34, 35, 36, 38
42 U.S.C. § 602(a)(11) 4, 16, 17, 21, 39, 42
42 U.S.C. § 602(a)(15) 22
42 U.S.C. § 602(a)(17) 4, 12, 13, 16, 22, 23, 31
42 U.S.C. § 602(a)(18) 4, 16, 22, 23, 31, 44
42 U.S.C. § 602(a)(20) 31
42 U.S.C. § 602(a)(21) 4, 16, 22, 23, 31, 44
42 U.S.C. § 602(a)(22) 4, 16, 22, 23, 31, 44
42 U.S.C. § 603(d) 26
42 U.S.C. § 606(b) 42
42 U.S.C. § 610 23
42 U.S.C. § 1983 ..... 6, 7
49 Stat. 627 33
60 Stat. 1095 16
70 Stat. 850 20
83 Stat. 45 26
Public Law 87-543 16

PAGE

STATUTES OF THE STATE OF NEW YORK.

New York Family Court Act § 413 13
New York Family Court Act § 414 14
New York Family Court Act § 513 14
New York Social Services Law § 101 14
New York Social Services Law § 101-a(1) 7, 11, 14
New York Social Services Law § 101-a(2)(3) .. 2, 4, 5, 8, 10, 12, 13, 15, 21, 32, 38, 39, 45

REGULATIONS OF THE SECRETARY OF HEALTH, EDUCATION AND WELFARE.

45 C.F.R. § 233.90(b)(4)(i)(ii) 3, 11, 20, 21
45 C.F.R. § 235.70 20

MISCELLANEOUS:

1967 Congressional Record, House, p. 23048 *et seq.* .. 27
1967 Congressional Record, House, p. 23055 26
1967 Congressional Record, House, pp. 36366, 36367, 36368 26
1967 Congressional Record, Senate, p. 32592 28
1967 Congressional Record, Senate, p. 32593 28
1967 Congressional Record, Senate, p. 32851 29
1967 Congressional Record, Senate, p. 33540 31
1967 Congressional Record, Senate, p. 36306 31
1967 Congressional Record, Senate, p. 36319 29
1967 Congressional Record, Senate, p. 36925 30
1962 United States Code, Congressional Administrative News, p. 1943 at p. 1959 ..... 22, 34
Senate Report No. 734 of 1939 ..... 33, 34
House Report No. 728 of 1939 33
Senate Report No. 1669 of 1950 17
House Report No. 1300 of 1950 ..... 17, 42
House Report No. 544 of 1967 23
Senate Report No. 744 of 1967 23
Senate Report No. 91-223 of 1969 26
Regulation of the New York State Department of Social Services 18 NYCRR § 369.2(f)(3)(ii)(e) 6
Handbook of Public Assistance Administration, Department of Health, Education and Welfare, Part IV, Section 8149 21
Handbook of Public Assistance Administration, Department of Health, Education and Welfare, Part IV, Section 8120 ..... 20, 21

PAGE

McKeany, Maurine, "The Absent Father and Public Policy in the Program of Aid to Dependent Children", University of California Press, 1960, pp. 41, 42 and pp. 45-46 18

"Characteristics of ADC Families in New York State, January 1971" 42

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Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT LAVINE

Opinion Below

The "Memorandum-Decision and Order" of the three-judge District Court filed September 26, 1973 as amended

by order of October 4, 1973 is set out as Appendix "A" to the "Statement as to Jurisdiction on behalf of Appellant Lavine". It is reported at 365 F. Supp. 818.

Jurisdiction

The "Memorandum-Decision and Order" of the three-judge District Court was entered on September 26, 1973. The Notice of Appeal of Appellant Lavine was filed in the office of the clerk of the United States District Court for the Northern District of New York on November 14, 1973. The case was docketed January 12, 1974, and on June 10, 1974 the Court noted probable jurisdiction. The jurisdiction of this Court rests upon 28 U. S. C. § 1253.

Statute Involved of the State of New York

New York Social Services Law, § 101-a(2) (3)[1]

(52A McKinney's Social Services Law,
Page 35, pocket part)

"§ 101-a Proceedings to compel support by persons in need thereof

• • •

"2. An applicant or recipient of public assistance who is the parent of a child or minor shall assist and cooperate with the social services official and appropriate authorities to obtain support or contributions to support for such child or spouse from the other parent or spouse by:

"(a) Furnishing the social services official with appropriate information including the location of the other parent or spouse.

---

[1] As added by Chapter 687 of the Laws of New York of 1972. Section 4 of Chapter 687 provides as follows:

"§ 4. The provisions of this act shall be ineffective to the extent that they are determined to be not in compliance with federal law regulations pertaining to public assistance and care."

"(b) Filing a petition and furnishing evidence in a proceeding for the establishment of the child's paternity and support under article five of the family court act.

"(c) Filing a petition and furnishing evidence in a proceeding to secure support for her child and herself under article four of the family court act.

"3. In the event an applicant or recipient of public assistance fails to institute a proceeding in accordance with the provisions of this section or other similar provisions of law, the social services official shall institute such proceeding under the appropriate provisions of the family court act and if such applicant or recipient willfully fails or refuses to furnish evidence necessary to support such petition, or furnish information relative to the location of the other parent, the social services official shall not provide or continue to provide assistance or care for the maintenance of such applicant or recipient so long as such applicant or recipent fails to assist or cooperate as required by the provisions of this section or other provisions of law."

Regulation Involved of the Secretary of Health, Education and Welfare

45 C.F.R. §233.90(b)(4)(i)(ii)

"§ 233.90 Factors specific to AFDC.

• • •

"(b) *Condition for plan approval.*—

• • •

"(4) A child may not be denied AFDC either initially or subsequently because a parent or caretaker relative fails to assist;

"(i) In the establishment of paternity of a child born out of wedlock; or

"(ii) In seeking support from a person having a legal duty to support the child; But neither this nor any other provision of these regulations should be construed to require that provision be made by a State

in its AFDC program for the maintenance of a parent or caretaker who fails to provide such assistance and AFDC may be denied with respect to such parent or caretaker.

* * *"

(38 Federal Register 10940, May 3, 1973, to be effective July 2, 1973.)

Statutes of the United States

42 U.S.C. § 602(a)(7), (11), (17), (18), (21) and (22) are set out as Appendix A to this brief.

Questions Presented

Do the provisions of New York Social Services Law, § 101-a (2)(3) that a social services official shall not provide assistance or care for the maintenance of a parent, who is an applicant for or recipient of public assistance, who willfully fails or refuses to furnish evidence to support a petition by a social services official, brought in the Family Court of the State of New York under appropriate provisions of the Family Court Act, to establish a child's paternity and support or to secure support for such applicant's or recipient's child and herself[2] or to furnish appropriate information including the location of the other parent, so long as such parent fails to assist or cooperate as required by such section or other provisions of law, conflict with the provisions of the Social Security Act?

Does a regulation of the Secretary of Health, Education and Welfare authorizing denial of maintenance to a

[2] Although New York Social Services Law § 101-a(2) (3) also requires a parent to cooperate in obtaining support for "herself" the Order below dealt only with obtaining support for children from an absent parent. Any requirement that the parent cooperate in obtaining support for "herself" is not involved in the case.

parent who fails to provide such assistance conflict with the provisions of the Social Security Act?[3]

Statement of the Case

Preliminarily we note that the case at bar has been before this Court previously (*Lavine* v. *Shirley*, 409 U. S. 1052 [No. 72-582]). This Court remanded. As will appear *infra* the three-judge Court below after remand permitted intervention, by Anna Stuck and amendment of the Complaint. The Court below found that the original named plaintiffs no longer felt aggrieved due to intervening events. The Court below, however, in its "Memorandum-Decision and Order" (J. S. 19) did not change the title of the action nor have we. We here set out the history of the action since its inception. It must be noted, however, that the Order herein was in favor of Anna Stuck. The original named plaintiffs were not named in the Court's Order.

---

[3] In the Court below we moved to dismiss the amended complaint for lack of subject matter jurisdiction in that it was argued that the complaint failed to present a substantial constitutional question, thereby depriving the Court below of jurisdiction in this Civil Rights Action. We do not pursue the question of "substantiality" (Jurisdictional Statement p. 12) because the Court has not postponed jurisdiction or requested the parties to address themselves to that question. While it is arguable whether the "Questions Presented" "fairly comprise" the question of the constitutionality of New York Social Services Law § 101-a(2) (3), we submit that in any event "The choice [as to cooperation] is entirely hers [the mothers] and nothing of constitutional magnitude is involved." *Wyman* v. *James*, 400 U.S. 309, 324 (1971). We have set out as Appendix "B" to this brief, our briefing in the District Court on this point.

Anna Stuck has not been barred from the welfare roles because of the illegitimacy of her child, but rather, because she has failed to cooperate in locating the father of her child. Any attempt to analogize this case to either *Levy* v. *Louisiana*, 391 U.S. 68 (1968) or *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968) must, therefore, fail. *Cf.* following: *Doe* v. *Shapiro*, 302 F. Supp. 761 at 762 (D.C. Conn. [1969], app. dismissed 396 U.S. 488 [1970], rehearing den. 397 U.S. 970 [1970]). See also *King* v. *Smith*, 392 U.S. 309 (1968) (Mr. Justice DOUGLAS concurring, p. 335, footnote 4).

The plaintiffs in the original complaint (appellees on the first appeal in this Court prior to remand) were persons against whom it was claimed that New York Social Services Regulation 18 N. Y. C. R. R. § 369.2(f)(3)(ii)(e) had been applied to require them to institute and prosecute non-support proceedings against deserting or abandoning fathers (A. 7). Sylvia Shirley allegedly declined to file a petition for non-support against her husband (A. 10); Elizabeth Anderson allegedly was required to file a petition for non-support against her husband from whom she was separated and who she claimed was already supporting her to the full extent of his ability. She wished to withdraw the petition for non-support which had been filed (A. 12). As to "Jane Doe" what was involved was an alleged effort to require her to file a non-support proceeding against the father of one of her children (A. 12). The original complaint alleged that the departmental regulation on its face and as applied was invalid as establishing an additional eligibility requirement not provided for by the Social Security Act (A. 15). The original complaint alleged jurisdiction under "42"[4] U. S. C. § 1343(3)(4), 42 U. S. C. § 1983 and 28 U. S. C. § 1331 (A. 7).

The suit was filed on behalf of the original named plaintiffs on March 23, 1972 and was heard by a District Court of three judges. After answer by both the State and County defendants (A. 22, 30), the plaintiffs on May 26, 1972 filed a motion for summary judgment (A. 34) which was granted by the Court below in its oral opinion of June 7, 1972 (A. 49) and implemented by its order dated July 14, 1972, filed July 21, 1972 (A. 63).

An appeal to this Court from that order was filed by the State Commissioner of Social Services on August 10,

[4] Apparently 28 U.S.C. was meant.

1972 (A. 65) and the case was subsequently docketed in this Court as number 72-582.

On December 11, 1972, this Court vacated the judgment below and remanded the case "for further consideration in light of chapter 687 of the 1972 Laws of New York (New York Social Services Law § 101-a as amended)" (A. 69) (409 U. S. 1052). The effective date of the amended statute was September 1, 1972.

After this Court's remand, plaintiffs' attorney brought on by order to show cause filed March 20, 1973 (A. 71) a motion to (1) reconvene the three-judge Court, (2) permit amendment of the complaint, and (3) permit intervention by Anna Stuck. That motion was returnable April 9, 1973. Both the State and County defendants moved to dismiss the action for lack of subject matter jurisdiction on the ground that the case had become moot (R. 200, 213). The motions were ordered held for the three-judge Court by District Judge Port.

By its order dated April 9, 1973, filed April 18, 1973 (A. 76), this Court granted plaintiffs' motion to amend the complaint and to intervene Anna Stuck.

The Amended Complaint (A. ....)

The amended complaint (permitted by the Order of the Court below of April 9, 1973), also alleged jurisdiction under "42"[5] U. S. C. § 1343 (3) (4), 42 U. S. C. § 1983 and 28 U. S. C. § 1331 (A. 80). No statement of claim on behalf of the plaintiffs in the original action was made. The Court below in its Memorandum-Decision of September 23, 1973 noted that:

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[5] Apparently 28 U.S.C. was meant.

> "The amended complaint does not reallege the facts concerning the original named plaintiffs. This omission was by design since they no longer feel themselves aggrieved due to intervening events. In its present posture, then, this is an action by Anna Stuck on behalf of herself, her minor children, and all others similarly situated • • •." (Jurisdictional Statement, page 23)[6]

The amended complaint contained the following "Statement of Claim" on behalf of the intervening plaintiff, Anna Stuck:

> "Intervening Plaintiff Anna Stuck has been receiving public assistance for herself and her four infant children since 1970. She was required by the Onondaga County Department of Social Services to appear at their offices for the biannual recertification of her eligibility for public assistance. She did so on February 2, 1973. She was told that she must bring a paternity action against the father of her youngest child herself, or authorize the Department to do so, and that she must cooperate fully with the Department in such action. She refused to cooperate in the bringing of such an action; her refusal was based on the fact that the father of her youngest child is disabled and is not able to support the child. Furthermore, she had been required by the Department of Social Services to file a paternity suit against the father of her first three children. That filing had lead to constant strife between her and the respondent. She does not wish to duplicate that situation with the father of her youngest child." (A. 83)

The amended complaint alleged two causes of action. The first cause of action alleged that New York Social Services Law § 101-a(2) (3) establishes "an additional eligibility requirement not provided for by the Social Security Act." (A. 85) Constitutional allegations are set forth in the second cause of action as follows:

---

[6] Hereinafter referred to as "J.S."

> "Defendants' action in erecting an additional requirement of eligibility constitutes a denial of equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it creates an invidious and unjustifiable distinction. New York's action in this case requires that impoverished mothers institute and cooperate in proceedings against their children's fathers; no such requirement is imposed on the well-to-do. Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another. Classifications based on wealth have long been recognized as peculiarly obnoxious to the principles of equality enshrined in the Fourteenth Amendment." (A. 85)

Answer of Appellant Lavine (A. 105)

As appears from appellant's answer, appellee Anna Stuck had a departmental fair hearing on March 1, 1973. Returned with the answer was the fair hearing decision of March 7, 1973 (A. 117). That fair hearing decision stated in part:

> "Appellant refused to disclose the location of the putative father of her youngest child. Appellant conceded at the fair hearing that she knew the mailing address of the putative father and had declined and still refused to disclose it. She had told the agency his name and the community where he presumably resided.
>
> "The record establishes that appellant had declared that she would not initiate paternity proceedings and desired that the agency not do so. Based upon the degree of cooperation received from appellant as to other information about the putative father, the agency properly found appellant's lack of cooperation to be a basis for termination of her assistance."

The answer, *inter alia*, denied the allegations set forth in plaintiffs' first and second causes of action.

Separate affirmative defenses of failure to state a claim upon which relief could be granted were alleged as to the original plaintiffs and as to plaintiff Stuck. As has been noted, appellant Lavine's motion to dismiss the action on the grounds that the case had become moot was held by Judge Port for the three-judge Court. The answer sets out such grounds as an affirmative defense, and additionally, sets out the affirmative defense of lack of subject matter jurisdiction under 28 U.S.C. § 1343 and under 28 U.S.C. § 1331. (These additional grounds were also contained in a motion to dismiss served coincidentally with appellant's answer and returnable before the three-judge Court on the argument on May 11, 1973 (R. 249.) Further affirmative defenses were lack of jurisdiction to award damages as prayed for in the amended complaint against defendant Lavine (appellant here); lack of standing and lack of capacity to sue; lack of an actual case of controversy, lack of a justiciable controversy; that plaintiffs Shirley, Anderson and Doe had failed to exhaust administrative remedies and that all plaintiffs had failed to exhaust State judicial remedies; and finally, that New York Social Services Law § 101-a (2) (3) is valid and constitutional.

The Court below considered the motions to dismiss as motions for summary judgment (J.S. 22) and granted summary judgment in favor of the plaintiff Anna Stuck only (J.S. 34).

The three-judge District Court on September 23, 1973 rendered its "Memorandum-Decision and Order" which was filed September 26, 1973. The "Memorandum-Decision" was amended by order of October 4, 1973.

The three-judge Court held that the "[p]laintiffs • • • have raised a substantial question with respect to the con-

stitutionality of New York Social Services Law § 101-a as amended" but the Court disposed of the case on the "statutory claim rather than indulge in a constitutional ruling." (J.S. 24.)

The Court stated that "While we are not outraged by nor unsympathetic to New York's effort to compel Anna Stuck to cooperate in a proceeding to compel support for her youngest child to the extent required by § 101-a, we find no authority for engrafting such a condition on to the Congressionally prescribed initial AFDC eligibility requirements or on to the grounds for discontinuance of benefits." (J.S. 25.)

The Court discussed 45 C.F.R. § 233.90 (b) (4) (i) (ii), a regulation of the Secretary of Health, Education and Welfare (which had become effective July 2, 1973) and which supports appellant's position. The Court indicated that it had withheld decision until after the effective date of that regulation in order "to authoritatively consider its effect." (J.S. 29.) The Court found that the "agency's new interpretation is in error and not a guidepost to be followed judicially." (J. S. 32.)

Class action status was denied because of the pendency of *Lewis* v. *Lavine* (Dkt. No. 72-CV-4249 [S.D.N.Y.]) a case also involving Social Services Law § 101-a in which a class action order had been made. (J.S. 32.)

The Court below denied plaintiffs' demand for retroactive payment. (J.S. 34.)

The Court granted summary judgment in favor of Anna Stuck "• • • declaring § 101-a, as amended, of the New York Social Services Law void, unenforceable and without effect insofar as it makes recipient cooperation in a paternity or support action against an absent parent a

condition of eligibility for AFDC" (J.S. 34), and it permanently enjoined defendants from denying or terminating AFDC assistance to appellee Anna Stuck or her minor children "for failure to cooperate in obtaining support from an absent parent of her children." (J.S. 34.)

No appeal was taken by appellant from that part of the order which permanently enjoined defendants from denying or terminating AFDC assistance to the minor children of Anna Stuck (A. 140, J.S. 36). New York Social Services Law § 101-a (2) (3) operates only upon the parent, not the children. The children's grant of AFDC continues.

Summary of Argument

I

The provisions of the Social Security Act are recognition of the primary responsibility of parents to support their children. The decision below erroneously shifts that burden of support from the parents to the State.

The provisions of the Social Security Act recognize that the right of a child to support is a valuable resource, the development and realization of which cannot be blocked by an intransigent parent.

New York Social Services Law § 101 (a) (2) (3) as added by Laws of 1972, Chapter 687 does not conflict with any specific provisions of the Constitution or the Social Security Act. On the contrary, the State statute involved implements at least two specific provisions of the Social Security Act. These are: 42 U.S.C. § 602 [a] [7] and 42 U.S. § 602 [a] [17] [A].

42 U.S.C. § 602 (a) (7) requires that a State agency shall, in determining need, take into consideration the in-

come and resources of any child or relative claiming AFDC.

42 U.S.C. § 602 (a) (17) (A) requires that a State plan must provide for the development and implementation of a program under which the State agency will undertake to establish the paternity of children born out of wedlock and secure support for them, and, as to legitimate children, secure support from a responsible parent. Thus there is no conflict between State Law and the Social Security Act. The Social Security Act allows for and requires State programs to establish paternity and obtain support.

II

New York as well as the Congress has a legitimate interest in obtaining support for deserted or abandoned children. New York Social Services Law § 101-a (2) (3) is agreeable to and furthers the provisions of the Social Security Act. The State statute is valid, however, even if it is held to create a condition for assistance, because the State statute does not conflict with any specific provision of the Constitution or the Social Security Act and operates within the legitimate sphere of State AFDC administration.

POINT I

It is the responsibility of parents, not the State, to support their children. The decision below erroneously reverses this basic concept by attributing to Congress an unexpressed intent to do so.

The primary responsibility for the support of the child is with its parents, not with the State. Under New York Family Court Act § 413, the father of a child is chargeable with its support if possessed of sufficient means or able

to earn such means. Under the provisions of New York Family Court Act § 414, if the father of a minor is dead or incapable of supporting his child or cannot be found within the State, the mother of such child is chargeable with its support. And New York Family Court Act § 513, provides, as to children born out of wedlock, *inter alia* that "[e]ach parent of a child born out of wedlock is liable for the necessary support and education of the child and for the child's funeral expenses." See also New York Social Services Law §§ 101 and 101-a (1).

The New York Court of Appeals has held:

> "Both at common law and by statute, New York has always treated a husband as absolutely responsible in keeping with his ability for the support of his dependent minor child or children * * *."
>
> *Landes* v. *Landes*, 1 NY 2d 358 at 365 (1956), app. dism. 352 U.S. 948 (1956).

See also *Strecker* v. *Strecker*, 10 New York A D 2d 312 (1st Dept., 1960) where the New York Court quoted *Blackstone* for the proposition that (p. 313)

> "The duty of parents to provide for the *maintenance* of their children, is a principle of natural law; an obligation * * * laid on them not only by nature herself, but by their own proper act, in bringing them into the world". (1 Blackstone Commentaries on the Laws of England [11th ed., 1791], pp. 446-447.)

At common law the father of an illegitimate child was under no legal duty to support such child. *Fite* v. *Miller*, 280 App. Div. 12 (4th Dept. 1952). The legal liability of such a father is statutory (Family Court Act, § 513, *supra*).

The support obligation of a father was long ago enunciated by this Court in *Dunbar* v. *Dunbar*, 190 U.S. 340, 351 (1903) where the Court held that "At common law,

a father is bound to support his legitimate children, and the obligation continues during their minority. We may assume this obligation to exist in all the States". And this Court has recently held that a State which posits a judicially enforceable right on behalf of children to needed support, cannot deny such right to an illegitimate child (*Gomez* v. *Perez*, 409 U.S. 535 (1973)), thus securing to *all* children the right of filial support which New York, by statute, his given to them.

In assessing State action restricting parental control of their children, this Court has often held that "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder". *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1943), *Ginberg* v. *New York*, 390 U.S. 629, 639 (1968), *Stanley* v. *Illinois*, 405 U.S. 645, 651 (1972). Implicit in such a declaration of parental rights, is the logical corallary that among the "first" and "primary" duties of parents is the duty of parents to support their children.

The effect of the decision below, in holding New York Social Services Law, § 101-a (2) (3) to be in conflict with requirements prescribed by Congress (J.S. 33), is to *reverse* long-standing principles governing the responsibilities of parents to support their children and to imply to Congress an unexpressed intent to *shift* such preexisting parental responsibilities from parents to the States. We submit that, if Congress had intended such a result "• • • such intentions would in all likelihood have been expressed in direct and unambiguous language. No such expression exists, however, either in the federal statute or in the committee reports" *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405 at 414 (1973).

The federal statute involved is 42 U.S.C. § 602(a) (11), (17), (18), (21) and (22). As will be shown, these provisions were not intended to shift parental responsibility from parents to the States.

On the contrary, the provisions of 42 U.S.C. § 602(a)(7) *require* the States to consider the support obligation of the father to be a resource of the child in determining need in the first instance.

A. The Notice to Law Enforcement Officers (NOLEO) Amendment of 1950 (42 U. S. C. § 602 (a) (11)) did not shift parental support responsibilities from parents to the State.

It was in 1950 that Congress first inserted provisions in the Social Security Act evincing its concern with the problem created by the parent who deserts or abandons his children. The 1950 amendment (60 Stat. 1095) inserted what is now 42 U.S.C. § 602 (a) (11) (formerly § 602[a] (10)) to provide that a State Plan must "effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid [to families with][7] dependent children in respect of a child who has been deserted or abandoned by a parent."[8]

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[7] The phrase "Aid to Families with Dependent Children" was substituted for the phrase "Aid to Dependent Children" by Public Law 87-543 of 1962.

[8] Since the NOLEO amendments of 1951 were aimed at prosecuting deserting or abandoning fathers, it is arguable that those amendments were directed toward the situation where a married man deserted his family, not cases involving paternity. Appellee Stuck, the intervenor below, is the only viable appellee before the Court, and her case involves a failure to cooperate in the establishment of the paternity of one of her children and obtaining support for that child. Thus, strictly speaking, 42 U.S.C. 602 (a) (11) has no application whatsoever to the case at bar. As noted in appellant Lavine's Jurisdictional Statement, however, (J.S. pp. 8 and 9), the Court below framed its order in terms of requiring "recipient cooperation in a paternity or support action".

Section 602(a) (11) came to be known as the NOLEO provision (Notice to Law Enforcement Officers).

Senate Report No. 1669 of 1950 (1950 United States Code Congressional Service, p. 3287 at 3345) simply stated:

> *B. Notification to appropriate law-enforcement officials*
>
> "Your committee believes that all instances of desertion and abandonment of children by parents which result in the payment of aid to dependent children should be brought to the attention of the proper law-enforcement officials. The committee-approved bill, therefore, would amend title IV of the Social Security Act by adding the requirement that an approved State plan must provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to dependent children with respect to a child who has been deserted or abandoned by a parent."

House Report No. 1300 of 1950 stated (p. 48):

> *F. Notification to appropriate law enforcement officials*
>
> "It has come to your committee's attention that the number of children receiving aid because of the desertion of the father is increasing. The legal responsibility of a parent for the support of his minor children is, of course, clearly established in the laws of every State. Your committee believes that all instances of desertion and abandonment of children by parents which result in failure to fulfill this responsibility should be brought to the attention of the proper law enforcement officials.
>
> "The bill, therefore, would amend title IV of the Social Security Act by adding a requirement that an approved State plan must provide for prompt notice to appropriate law enforcement officials of the furnishing of aid to dependent children with respect to a child who has been deserted or abandoned by a parent."

"NOLEO" was a product of the times in which it was spawned. Maurine McKeany, in a publication entitled "The Absent Father and Public Policy in the Program of Aid to Dependent Children", University of California Press, 1960, stated (foot notes omitted):

"WHY CONGRESS ADDED THE NOLEO AMENDMENT"

"*Public criticism of ADC.*—Congress added the Noleo requirement in a period during which ADC was being subjected to much public criticism. In the years following World War II, a variety of attacks were made upon this program. The expense of ADC at a time when the nation was enjoying relative prosperity was difficult for many persons to understand. High grants to large families (which were necessary because of increased living costs and which were sometimes higher than the low-paid worker could earn) were the object of adverse criticism. Legislatures in certain states acted to limit the administrative discretion of public welfare agencies by placing ceilings on the amount which any family could receive.

Recipients were accused of 'chiseling' and mismanaging their grants, and public welfare agencies were blamed for inefficient administration of the ADC program. The provision of the Social Security Act limiting the disclosure of information concerning applicants or recipients to purposes directly connected with the administration of public assistance was questioned. Wilbur Cohen has pointed out that the events leading to the passage of the Jenner amendment of 1951, which modified this provision, were touched off by the denial of a request by a county prosecutor in Indiana for a list of persons receiving ADC. The prosecutor asked for this list in order that he might determine whether fathers were obeying the court orders for support of their children. Among the charges repeatedly leveled at ADC was that fathers—both married and unmarried—were permitted by the existence of this program to shift their obligations to the taxpayer." (pp. 41, 42)

• • •

"The Noleo amendment as a compromise measure.— Representative Tom Steed urged the House Ways and Means Committee, which was holding hearings on the social security amendments, to include his bill (H. R. 4057) as an amendment to the Social Security Act. This bill contained two proposals: (1) to make the deserting parent who crosses state lines subject to federal prosecution, and (2) to make it mandatory for welfare workers to advise prosecuting attorneys when a child whose parent has deserted him receives public aid.

Mr. Steed believed that his bill provided a way to enforce the assumption of responsibility by the father without depriving children of needed support. In urging the passing of this bill he said in part: 'In introducing this bill, *I do not intend that aid shall be withheld from any needy child, but rather this bill is aimed at parents, who, without justification, shift the financial responsibility for their children to the federal, state, and local governments.*' Another aim of this bill was to bring about cooperation of law-enforcement officials and welfare agencies. Mr. Steed pointed out that, under the existing law, welfare agencies were prohibited (by the confidentiality provision of the Social Security Act) from notifying prosecutors of cases of desertion or abandonment, and that the wife usually failed to do this.

"The Noleo amendment was the result of a compromise which was presented by Fedele Fauri, then staff adviser to the Committee on Ways and Means. By this compromise, state governments continue to have responsibility for dealing with the offenses of desertion and abandonment, but a state receiving federal funds for ADC is required to develop a plan for prompt notice to the appropriate law-enforcement officials in all cases in which aid is furnished to a child who has been deserted or abandoned by a parent. Wilbur Cohen analyzed the reasons for the adoption of the compromise proposal as follows: 'Congress, in initiating and adopting the amendment, was responding to public opinion and at the same time attempting to work out something constructive without infringing

on state rights or broadening the area of Federal control over family matters or changing the basic principles of the ADC program.'

Thus, the Noleo amendment was the result of the desire to put into effect two public policies—support of needy children and enforcement of the performance of duty by fathers who fail to support. The proponents of this amendment believed that it presented a method by which both of these objectives could be achieved." (pp. 45-46 (Emphasis supplied)

Congressman Steed, in proposing NOLEO did not intend that aid should be withheld from any needy child. But he recognized the inherent wrong involved in parents shifting the burden of support of their children to federal, state and local governments. And we submit that he was referring to *both* parents, not just to the father because prior to 1950 only the child received a grant of aid to dependent children. It was not until 1950 (70 Stat. 850) that the mother was included as a recipient.

On June 11, 1951, the Department of Health, Education and Welfare promulgated, *inter alia*, section 8120 of Part IV of the *Handbook of Public Assistance Administration*.[9]

Section 8120 provided, *inter alia:*

"8120. *Interpretation*

• • •

"Congressional action was clear with regard to the difference between public assistance administration and law enforcement, and did not place upon the public assistance agencies responsibility for enforcing support. The public assistance job is seen as that of providing eligible children with the assistance they need; and it is not the intent of the legislation to deprive

[9] Since codified for the most part in 45 C.F.R. § 235.70 (36 *Federal Register* 33869). Section 235.70 has no application to the case at bar. The new HEW regulation (45 C. F. R. § 233.90 (b) (4) (i) (ii)) specifically so provides.

> needy children of assistance in order to punish their parents for neglect of their duties. Although accepting assistance involves notice to the law-enforcement officials if a parent has deserted or abandoned his child, the amendment does not impose an additional eligibility requirement. This is clear in the wording of the provision which requires notice that *aid has been furnished* 'in respect of a child who has been deserted or abandoned by a parent.'"

And Section 8149 of Part IV of the Handbook of Public Assistance Administration, provided:

> "8149. Legislative Recommendations.—In most instances, States should be able, without changes in State laws, to carry out this requirement of the Federal act by issuing the necessary rules and regulations. The Bureau advises against legislation that makes the actual commencement of action on the part of a parent to obtain support from the parent who has deserted or abandoned his children a condition of eligibility. Such provisions deprive needy children, who would otherwise be eligible, of the right to receive aid to dependent children pending the commencement of action to obtain support from the absent parent."

HEW's interpretation of the NOLEO provision of 1950 is consistent with its recently promulgated regulation (45 C.F.R. § 233.90(b)(4)(i)(ii)) acknowledging the right of the States to refuse to provide maintenance for a parent or caretaker who fails to provide assistance in establishing paternity and in seeking support. This is so because as to the NOLEO amendment HEW had grounded its position (section 8120, *supra*) upon the precise wording of 42 U.S.C. § 602(a)(11).

New York Social Services § 101-a(2)(3) does not deny AFDC to any child. It requires only that the parent perform her natural duty to support and obtain support for her child. That duty is hers, not the State's. The NOLEO amendments of 1950 did not change that "basic concept".

B. The 1967 Amendments to the Social Security Act (42 U. S. C. § 602 (a) (17) (18) (21) (22)) did not shift parental support responsibilities from parents to the State.

The 1967 amendments to the Social Security Act for the first time, in an effort to reduce the incidence of illegitimate births, inserted the provisions of 42 U.S.C. § 602 (a)(15), which provides, *inter alia,* for the development of a program by the States to prevent or reduce the incidence of births out of wedlock and to otherwise strengthen family life (§ 602 [a][15][A][ii]) and for the implementation of such programs by the furnishing of family planning services (*id.* [B][i]).[10]

But there was another side to the coin. The 1967 amendments to the Social Security Act (Section 602[a]) further provided that a State plan must:

> "(17) provide—
>
> (A) for the development and implementation of a program under which the State agency will undertake—
>
> (i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and
>
> (ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and * * *."

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[10] The 1962 amendments to the Social Security Act had placed a new emphasis on family services, and in line with that change, the name of the program was changed to "Aid and Services to Needy Families with Children", and the name of the assistance provided under the program was changed to "Aid to Families with Dependent Children" (thus, AFDC, rather than ADC, as formerly). (Senate Report No. 1589 relating to the public welfare amendments of 1962, 1962 United States Code Congressional and Administrative News, p. 1943 at 1956).

Section 602(a)(17)(B) requires that there be a special administrative unit in each State to establish paternity and obtain support. Section 602(a)(18) requires States to enter into agreements with law enforcement and judicial agencies. Section 602(a)(21) and (22) require States to provide information useful in locating deserting parents and to assist each other in obtaining and enforcing support obligations of such parents. See also 42 U.S.C. § 610.

Senate Report No. 744, 1967 United States Code Congressional and Administrative News, p. 2834 at 2997, stated, in part:

> "A substantial proportion of the persons receiving aid under the AFDC program are eligible because of the desertion by a parent of the child. Several provisions are already in the law and more are proposed under the bill to provide additional tools[11] to States and to impose further obligations on them to assure the determination of legal responsibility for support and to make efforts to make these collections. The committee believes it is essential to make certain that all legally responsible parents of sufficient means make their appropriate contribution to the support of their children."

House Report No. 544 of 1967 dealt with "parental desertion" and "referral to courts".

As to referral to the Courts, the Committee's report stated (p. 100):

> "*Referral to courts*—Your committee's bill would add a plan requirement on the relationship of the public welfare agency to the courts and law enforcement officials. Under present law, the States are required to report to the appropriate law enforcement officials

[11] *Cf. Wyman* v. *James*, 400 U.S. 309 where the challenged regulation conditioning continuation of AFDC benefits on home visits by case workers was deemed to be "a reasonable administrative tool" (400 U.S. 309 at 326).

the granting of assistance to any child who is made eligible by the desertion or abandonment by his parent. *This provision has not been broad enough to accomplish objectives which the committee believes are essential—securing support from the deserting or abandoning parent in every possible case.* There needs to be a cooperative arrangement between the courts and law enforcement officials and the welfare agencies in several program areas. The agreement should cover the manner in which referrals are made to the court when the welfare agency believes the child's home is unsuitable because of neglect, abuse, or exploitation of a child. The agreement should also provide for calling the attention of the law enforcement agencies to such instances and giving all necessary information to the appropriate law enforcement officials. Thus, for example, if an AFDC mother is not caring properly for her children, the matter would quickly come to the attention of the courts and appropriate action taken, including the possibility of placing the children in foster care.

"The agreement might appropriately cover other areas of joint interest between the welfare agencies and the courts and the law enforcement agencies including the manner of referral to the welfare agency of instances of dependency and the need for public social services coming to the attention of the courts and law enforcement officials." (Emphasis supplied)

As to "parental desertion" the report stated (p. 102):

"*Parental desertion.*—In addition to illegitimacy as a major cause of dependency, absence of a parent from the home by desertion is a major problem. To deal with this, your committee is proposing additional requirements on the States to bring about a closer relationship between the welfare agencies and the law enforcement agencies and courts of the States *so that every reasonable effort will be made to locate and obtain support from the absent parent.*

"One of the major factors which has prevented the full utilization of the resources of the law enforcement agencies is the lack of authority for the welfare

agencies to reimburse the law enforcement agencies, with Federal sharing, for their expenses. Your committee is proposing that this weakness be corrected by allowing Federal sharing in the reasonable expenses of the law enforcement agencies with respect to welfare recipients as a usual administrative expense of the welfare program. The committee expects that this expenditure of Federal funds will result in increased effort to enforce the laws against desertion and non-support. The committee also expects of the Department of Health, Education, and Welfare extreme diligence in working out the implementation of this provision to protect the Federal funds and to assure maximum benefit from the money expended. Reimbursement should be limited to the basic expenses for the personnel directly involved in the establishment of paternity, location of deserting parents, and for obtaining support from such individuals. Inasmuch as this is a normal function of Goverment and, thus, should be available to welfare recipients as well as all others in the community, your committee believes that a relatively small Federal contribution toward the cost of this operation should be sufficient.

"The above requirements on the States having to do with establishment of paternity, location, and obtaining support from absent parents will absorb the attention of some full-time staff members of the State and local agencies in many areas. In order to make certain that these functions are executed with diligence and are fully coordinated, the committee bill provides that there shall be a unit established in the State agency and in each political subdivision responsible for these functions. Although in some instances these functions can be carried out by persons also carrying other responsibilities, this requirement will, normally, require staff working in this area full time. A related provision, discussed earlier in this report, would allow courts to use social security earnings records in order to locate a parent who is not supporting his child." (Emphasis supplied.)

Thus the 1967 amendments were intended to help the States and not hinder them in gaining support payments.

One of the proposals advanced by the House during the course of the deliberations on the 1967 amendments to the Social Security Act was to freeze (insofar as Federal financial participation is concerned) the largest AFDC category—where the parent is absent from the home—at then existing proportions of each State's child population. This was added as 42 U. S. C. § 603(d), since repealed (83 Stat. 45). Chairman Wilbur Mills of the House Ways and Means Committee was of the opinion that the freeze "• • • would give the States an additional incentive to make effective use of the constructive programs which the bill would establish" (Congressional Record, House, August 17, 1967, p. 23055).[12]

The freeze provided by § 603[d] was ultimately repealed because of unexpected effects arising from its application in light of the Court's decisions in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969) and *King* v. *Smith*, 392 U. S. 309 (1968) which would have led to the exclusion from Federal matching of great numbers of persons whom it was not the intent of Congress to exclude. See Senate Report No. 91-223 of 1969 concerning "Chicory Roots—Suspension of Duty—Social Security", 1969 United States Code Congressional and Administrative News, pp. 1051 through 1055, inclusive.[13]

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[12] For the remarks of Representative Mills in presenting the conference report, see 1967 Congressional Record, House, pp. 36366, 36367 and 36368.

[13] That report which was presented to the Court in Commissioner Lavine's reply brief in the *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405 (1973) clearly indicated that during the course of negotiations on the repeal of section 603(d) it was anticipated that action by this Court in *Shapiro* v. *Thompson* and *King* v. *Smith* would be on constitutional grounds and that the members of Congress did not anticipate that *King* v. *Smith* would be decided on statutory rather than constitutional groudns (*id.* p. 1054).

The House debate on the 1967 amendments appears at 1967 Congressional Record—House, p. 23048, *et seq.* That debate clearly shows that the House was seriously concerned with the problem of the father who had abandoned the home and was not supporting his dependents. This was made clear from the remarks of Representative Byrnes of Wisconsin which show that the "freeze" was aimed at situations where the father has left the home. He stated (1967 Congressional Record—House, p. 23059):

> "The only qualification or limitation applies to situations where in some instances the father has abandoned the home—left the home—and is not taking care of his dependents. That is where we place the limitation, because that is where the growth and the problem lies.
>
> "In my opinion the evidence which was presented before the Committee on Ways and Means was perfectly clear to the effect that there has not been any effort to find these parents in far too many cases, to find these fathers in far too many cases, who have abandoned the support of their children.
>
> "In other words, Mr. Chairman, we have got to put some teeth into this situation in order to force the States to see that these fathers bear the burden of supporting their own children. That is the only area in which we have placed any limitation upon this particular part of this legislation."

Thus it is apparent that the "freeze" was intended to apply the "crunch" to the States to force them to do something about obtaining support, not to hinder them in seeking support from deserting or abandoning parents.

Mr. Byrnes' remarks clearly constituted a call to action by the States to find the deserting or abandoning parent and are consistent with and not a limitation upon the States' power to require that a parent assist in proceedings against an abandoning or deserting parent, especially so where, as

here, only the parents or caretaker relatives' grant is involved.

Senator Long, who was apparently the floor manager of the 1967 Social Security Bill in the Senate, stated that the amendments "would make more certain the fullfillment of parental responsibilities." He further noted:

> "• • • a requirement to assure that fathers who desert or abandon their families will contribute to the support of their families by using available tax records and the tax collecting and enforcement power of the Internal Revenue Service [not adopted (sic)]. This is a matter in which I have been particularly interested. In addition, there would be a requirement that the States establish separate units to enforce the child-support laws, including financial help to the courts and prosecuting agencies to enforce court orders for support;" (1967 Congressional Record, Senate, p. 32592).

Senator Long further stated (1967 Congressional Record, Senate, p. 32593):

> "Because of the constructive provisions of the bill, particularly those relating to the work-incentive program, family planning, and parental support, the committee has stricken from the House bill the provision which would impose a limitation, for Federal financial participation purposes, on the number of children whose eligibility is based upon the absence from the home of a parent. **The committee believes that these other provisions will do what the House had in mind without running the risk of depriving needy children** of the assistance they require."[14]

Senator Curtis in his statement said "Also, the State can do a better job if it enforces the law and requires deserting fathers to support their children." As to the freeze, he stated:

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[14] The "freeze" was restored after conference with the managers for the House.

"I would point out that if a State is adversely affected by this freeze it can readjust its eligibility requirements so it can provide for the more needy cases." (1967 Congressional Record, Senate, p. 36319.)

Senator Ribicoff's statement was as follows:

"RELATIONSHIP TO LAW ENFORCEMENT AGENCIES

"There are several provisions in the bill on the relationships of public welfare programs to the law-enforcement agencies. These provisions are designed to secure the legal rights of children by establishing paternity, in all instances of children born out of wedlock, and making sure that the law-enforcement people are informed of all instances of expected exploitation or neglect of children, and to enlist the total support of law-enforcement officials in the location of absent parents and the collection of support orders. To assist in the effective implementation of these provisions, the State welfare departments are directed to meet part of the cost of the State law-enforcement function that relate to services to needy children. The committee bill contains a unique provision to aid in the location of deserting parents and in the collection of the amounts due their children. Welfare agencies are to have the use of information in the files of the Internal Revenue Service in the location of absent parents, in addition to the resources they now have of the social security files. There may be some persons who owe support to their children who have the ability to pay the required sums and who have refused to do so. In those instances, the Internal Revenue Service is directed to proceed against the individual as though he had a tax obligation which he has not paid and to collect the sums due. (Not adopted [sic].) We do not expect that very many cases will reach this point. We expect that the very existence of this provision and the knowledge of its possible use will help to bring about support from persons who are obligated to pay and that the actual collection machinery will be used only rarely." (1967 Congressional Record, Senate, p. 32851.)

Senator Mansfield's remarks, appearing at 1967 Congressional Record, p. 36925, were as follows:

"STRENGTHENING FAMILY LIFE

"Strengthening family life, the other major goal of individual planning, is very much needed. The growing incidence of illegitimacy, desertion, and divorce is of great concern to all Americans. Among the needy, those with limited education and poor parental background, these problems are especially severe.

"The unfortunate children who happen to be illegitimate must never be punished. Every effort should be made to obtain support from their parents. Only too often these steps are not taken. If the children have been deserted, every effort must be taken, under this bill, to use the existing legal machinery to locate the absconding individual and hold him accountable for the money he should pay for the support of his children.

• • •"

Also set out is colloquy between Senator Kennedy of New York and Senator Long as follows:

"Am I correct in my understanding that the intent of the new section 402(a) (17) of the law is to indicate Congress concern that, wherever possible, paternity of children should be established and support obtained from the father?

"Mr. LONG of Louisiana. The Senator is correct.

"Mr. KENNEDY of New York. Am I correct that based on my reading of the bill and the committee report, that the committee does not intend by this new paragraph 17 that establishment of paternity is a prerequisite for obtaining AFDC?

"Mr. LONG of Louisiana. The Senator is correct. It is a purpose of the provision of our bill just as it was the purpose of the provision in the House bill, that the State agency should seek to obtain support from a father who has abandoned his children and left them on welfare.

"I have been inclined to think perhaps the State might require it, not as a condition of aid to the child, but as a condition of paternity and the mother identifying as the mother; but there is nothing in the bill to say that. We are talking about the House language of the bill. This is not the Senate language.

"Mr. KENNEDY of New York. We are establishing that, during the period of time the effort is being made to establish the paternity of the child, the child will not lose the welfare payment.

"Mr. LONG of Louisiana. So far as I know, there is nothing in the bill to suggest that." (1967 Congressional Record, Senate, p. 33540.)

Senator Long in his statement in support of the conference report stated as to the freeze:

"The freeze applies not to the entire AFDC population, but only to those whose parent is absent from the home. It seeks to take the incentive out of illegitimacy, or out of a father's running away from his obligations to his children." (1967 Congressional Record, Senate, p. 36306.)

The State and Federal Governments have a common concern requiring deserting or abandoning parents to support their children. Clearly, neither the provisions of 42 U.S.C. § 602(a) (17) (18) (21) and (22) nor their legislative history limit the rights of the States to seek support for dependent children by enlisting the participation of the parent or caretaker relative.

42 U.S.C. § 602 (a) (18) (20) and (21) provide aids to the States in developing and implementing State programs required by the provisions of 42 U.S.C. § 602 (a) (17) (A). 42 U.S.C. § 602 (a) (17) (A) requires the States to develop and implement programs (a) to establish paternity for children born out of wedlock and to secure their support and (b) to secure support for deserted or abandoned children.

This is precisely what New York Social Services Law, § 101-a(2) (3) does.

The provisions of the Act do not, however, shift the parents' duty of supporting their children to the State. Rather they are recognition of the existence of that duty and amount to instruction to the States to enforce it.

C. 42 U.S.C. § 602 (a) (7) requires that the States in determining need take into consideration the income and resources of a child or relative claiming AFDC. In fulfilling such requirement, the State must take into account "any" income and resources. The provisions of section 602 (a) (7) did not shift parental support responsibilities from parents to the State. On the contrary, such provisions are recognition of such responsibilities and place them upon the parents where they belong.

We have demonstrated that New York Social Services Law § 101-a(2) (3) furthers "basic concepts" pertaining to parental support obligations and specific provisions of the Social Security Act relating to the establishment of paternity and the obtaining of support which are recognition of such "basic concepts". But there exists another requirement in the Social Security Act which, we submit, amounts to recognition of the duty of parental support, and which virtually mandates that the States enlist the aid of the parent or caretaker relative to obtain support from a deserting or abandoning parent.

42 U.S.C. § 602(a) (7) provides that a State plan must:

> "(7) • • • provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income;".

When AFDC was first inserted in the Social Security Act in 1935 (49 Stat. 627) the statute contained no method for determining the existence of "need".

The 1939 amendments to the Social Security Act sought to cure this deficiency by inserting parallel amendments in the Old Age Assistance Program (Title I), the Aid to the Blind Program (Title X) and the Aid to Dependent Children Program (Title IV).

House Report No. 728, relating to the Social Security Act of 1939 stated:

> "The purpose of all three assistance programs is further clarified by inserting the word 'needy' in the definitions of those who may receive old-age assistance, aid to the blind, or aid to dependent children. A closely related clarifying amendment is applied to all three assistance titles and provides that the States, in determining need, must consider any other income and resources of individuals claiming assistance." (*id.* p. 29, also Senate Report No. 734, p. 31)

The "closely related clarifying amendment" which was the precursor of the present-day's 42 U.S.C. § 602 (a) (7), was the subject of specific comment in the Reports. The reason for the insertion of the "clarifying amendment" in all three titles is to be found in the explanation of the amendments to the old age assistance provisions of the Social Security Act (Title I). The House Report states (p. 32):

> "The present subject matter of clause (7) is stricken from section 2 (a) by the amendment and is treated in section 102 of the bill. The amended clause (7) is effective July 1, 1941. Under this clause the State plan must provide that the State agency *shall*, in determining need, take into consideration any income and resources of an individual claiming old-age assistance. This will make it clear that, ***regardless of its nature or source, any income or resources will have to be con-***

sidered, including ordinary income from business or private sources. Federal benefit insurance payments under title II of the Social Security Act, *and any other assets or means of support. The committee recommends this change to provide greater assurance that the limited amounts available for old-age assistance in the States will be distributed only among those actually in need and on as equitable a basis as possible."* (Emphasis supplied.) Also Senate Report No. 734, p. 39.

The specific amendment to section 602 (a) (7) relating to AFDC was explained at pages 55 and 56 of the House report in the following terms:

> "Section 401 (b) adds a new clause, [to section 402 (a)] numbered (7), which becomes effective July 1, 1941. Under this clause the State plan must provide that the State agency *shall,* in determining need, take into consideration any income and resources of any child claiming aid under this title. It also adds a new clause, numbered (8) effective July 1, 1941, which requires that the State plan must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to dependent children. These new provisions are similar to those added to title I of the Social Security Act by section 101 of the bill." (Emphasis supplied.) Also Senate Report No. 734, p. 66.

Section 602 (a) (7) as added by the 1939 amendments read that a State plan must "(7) provide that the State agency shall, in determining need, take into consideration any other income and resources of any child claiming aid to dependent children".[15]

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[15] It was not until 1962 that relatives were added as persons whose income and resources were required to be considered. Also in 1962 provision was first made for the consideration of expenses reasonably attributable to the earning of income. Apparently the States had been considering all income of relatives without provision in the law. See 1962 U.S. *Code, Congressional Administrative News,* p. 1943, at 1959.

The Senate and House Reports of 1939 expressly stated that "regardless of its nature or source, any income or resources *will have to be considered*" (emphasis supplied), in order to assure that the limited amounts available for assistance payments in the States, "will be distributed only among those actually in need and on as equitable a basis as possible."

In our Jurisdictional Statement, we argued that "limited State welfare funds should be permanently expended only on behalf of those truly in need" (J.S., p. 17). That position clearly comports with what Congress had in mind when it was said that State moneys should be distributed only among those actually in need and on as equitable a basis as possible.

In 1939, the relative was not a recipient of AFDC, but only the child. We submit that the principal resource available to a child was the right of that child given to him by State law to be maintained and supported by his parents.

The State is duty-bound by the provisions of 42 U.S.C. § 602 (a) (7) to determine the existence of need, and, as stated in the House and Senate Reports, assure that assistance "will be distributed only among those actually in need and on as equitable a basis as possible." Where the applicant or recipient of AFDC fails to disclose facts about her needs and resources within her knowledge, or to provide such information as will enable the local social services agency to ascertain and verify her needs and resources, it is not possible to determine whether she and her children are actually in need. To hold otherwise would require the local social services agency to determine the basic question of "need" in the applicant's or recipient's favor where the information crucial to that determination, the applicant's needs and resources, is not available to the agency. In ef-

fect, the local agencies would be required to make a gift of public funds. Appellee Stuck may not place such demands upon the public treasury (*Wyman* v. *James*, 400 U.S. 309, 322 [1971]).

The obtaining of such information is the only practical means of complying with the provisions of 42 U.S.C. § 602 (a) (7) and of administering the program. See *Saiz* v. *Hernandez*, 340 F. Supp. 165, 167 (D. New Mexico [1972] [MECHEM, J.]).[16]

In *Doe* v. *Shapiro*, 302 F. Supp. 761 (D.C. Conn. [1969]), app. dismissed 396 U. S. 488 [1970] (for late docketing), rehearing den. 397 U.S. 970 [1970], the child, as well as the parent, was denied public assistance for the failure of the mother to cooperate. The remarks of District Judge CLARIE, in dissent, have particular cogency in the context of the case at bar where assistance payments are denied only to the uncooperative mother but not to the child. Judge CLARIE said (302 F. Supp. 761, at 768):

> "The focal statutory provision which has application here is § 602(a) (7); it reads in part:

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[16] This Court has recognized that a State AFDC plan "must 'provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid'". *Wyman* v. *James*, 400 U.S. 309 at p. 315 (1971). The home visitation by a social worker upheld in that case would further compliance with the provisions of 42 U.S.C. § 602(a)(7).

As to the requirements of section 602(a)(7), a three-judge District Court in *Doe* v. *Norton*, 365 F. Supp. 65 (D.C. Conn., 1973) app. pend. stated (p. 80):

> "The defendant public official, who administers the laws under which welfare assistance is given to these plaintiffs, is not only authorized, but *required*, to proceed under the statute in order to establish the primary obligation of the father to support his child as one of the 'resources' which the state is entitled to consider in ascertaining the plaintiffs' eligibility for AFDC benefits. See 42 U. S.C. § 602(a)(7)." (Emphasis supplied.)

'(A State plan for aid and services to needy families with children must) * * * provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.'

It is fundamental in this statutory scheme, that the sources of all family income be disclosed as a prerequisite to an applicant's qualifying for eligibility benefits. Thus the mother's disclosure of the known identity of a legally liable putative father is certainly an essential element in correctly evaluating the applicant-mother's support capabilities, as stated on the application in behalf of herself and her dependent children. Her limited disclosure of actual current income is incomplete, if any of the available sources remain unrevealed.

She is the actual party plaintiff in this action; it is to her that the government welfare benefits are directly paid. It is through her, that the family unit is sought to be preserved, as an essential unit of our society. She is the actual recipient of these moneys as head of the household. *It is the plan and expectation, that her maternal interest as natural parent and guardian will assure to the dependent child the full benefits of the government allotment.*

Unless the principle of personal parental responsibility is to be abandoned, as an obsolete cornerstone for gauging welfare eligibility, a full disclosure is a necessary and implied governmental prerogative, which requires the applicant to disclose all relevant information. Absent this personal responsibility and cooperativeness between the applicant-mother and the government, the effectiveness of the program would be seriously challenged because she is the sole source of this information; and without it the system designed to establish paternity could not function. See James v. Goldberg, D.C., 302 F.Supp 478 (June 13, 1969)". (Emphasis supplied)

Judge CLARIE's comments bring into vivid focus the proper role of 42 U.S.C. § 602 (a) (7) in the case at bar. The State, in determining eligibility, is clearly required to consider support payments as a resource. New York does not assume that since a parental duty of support exists, the support payments are in fact available to the mother (*cf. King* v. *Smith*, 392 U.S. 309 (1968) and *Lewis* v. *Martin*, 397 U.S. 552 (1970). It does insist, however, that the mother assist and cooperate in the realization of the resource which the legal obligation of the natural parent to support his child creates. The failure of the parent to cooperate in the converting of the support obligation to cash to be used in reducing the cost of assistance, thus, permitting the State to more equitably distribute its limited public assistance funds, is justification for the discontinuance of AFDC to the parent. To hold otherwise is to vest the administration of the State AFDC program in the uncooperative parent rather than in the State agency and to shift pre-existing parental support responsibilities from parents to the States contrary to the express provisions of 42 U.S.C. § 602 (a) (7).

POINT II

New York Social Services Law § 101-a (2) (3) operates within the legitimate sphere of State AFDC administration and serves legitimate State purposes. The State statute is valid even if it is held to create a condition for assistance.

A

We have thus far argued that New York Social Services Law § 101-a (2) (3) is in harmony with and furthers the provisions of the Social Security Act and that thus the State statute does not create a condition of eligibility.

But whether Section 101-a (2) (3) is found to create a condition of eligibility or not is irrelevant to the case at bar. This Court has held that "so long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act the courts may not void them". *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405 at p. 423 citing *Jefferson* v. *Hackney*, 406 U.S. 535 at 545 (1972). New York's requirement of parental cooperation does not violate any specific provision of the United States Constitution or of the Social Security Act. Rather it operates "within the legitimate sphere of state administration" (*Dublino*, 413 U.S. at p. 422) and is thus proper in any event.

Prior to this Court's decision in *Dublino*, the Court had summarily affirmed three District Court decisions in which AFDC was denied to mothers *and* their children for the failure of the mother to cooperate. These are *Taylor* v. *Martin*, 330 F. Supp. 85 (U.S.D.C., N.D. Calif. 1971), affd. *sub nom.*; *Carleson* v. *Taylor*, 404 U.S. 980 (1971); *Meyers* v. *Juras*, 327 F. Supp. 759 (D.Or., 1971) affd. 404 U.S. 803 (1971), reh. den. 404 U.S. 961 and *Doe* v. *Swank*, 332 F. Supp. 61 (N.D. Ill., 1971) affd. *sub nom. Weaver* v. *Doe*, 404 U.S. 987 (1971). In each of the cited cases, attempts had been made to deny AFDC benefits not only to uncooperative mothers, but to their children as well. The Court's summary affirmances appear to have been grounded upon the holding of *King* v. *Smith*, 392 U.S. 309 (1968) that the appeal in that case raised "* * * only the question whether the State may deal with * * * problems * * * *by flatly denying* AFDC assistance to otherwise eligible dependent children." (p. 320) (Emphasis supplied.)

It is also possible that decision in those cases was premised upon the specific provision of 42 U. S. C. § 602 (a) (11), the original NOLEO provision, which had been con-

strued by HEW to expressly preclude the denial of assistance to the child.

Where efforts were made by the States to discontinue only the mother's grant, but not the children's, for her failure to cooperate in obtaining support from the father of her children, the Courts held such efforts to be unauthorized. Thus, in *Doe* v. *Harder*, 310 F. Supp. 302 (D.C. Conn., 1970), app. dis. for want of jurisdiction, 399 U.S. 902 (1970). The District Court in Connecticut had before it a regulation of the State of Connecticut which had been amended to provide for termination of AFDC payments to the mother rather than to the children if the mother refused to name the child's father.[17]

The Court held (p. 303):

> "This regulation, while in form directed at the mother rather than the child, has the same vice as the original. It reduces the assistance to the family by creating an additional eligibility requirement identical to that held invalid and not authorized by the federal statute."

Other Courts followed the lead of the *Harder* Court and invalidated similar requirements in other States. See *Woods* v. *Miller*, 318 F. Supp. 510 (W.D. Pa. 1970); *Doe* v. *Lavine*, 347 F. Supp. 357 (S.D.N.Y. 1972) and *Doe* v. *Gillman*, 347 F. Supp. 482 (N.D. Iowa, 1972) modified 479 F. 2d 646 (8th Cir. 1973) petition for certiorari pending *sub nom.*, *Burns* v. *Doe*, No. 73-406.

The Court below, the *Harder* Court and those decisions which followed its teaching failed to recognize that regu-

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[17] In *Doe* v. *Shapiro*, 302 F. Supp. 761 (D.C. Conn. (1969)), app. dis. 396 U.S. 488, reh. den., 397 U.S. 970 (1970) the Connecticut Court had enjoined the operation of a State regulation providing for termination of payments to an illegitimate child if the mother refused to name the child's father. Connecticut then sought to withhold assistance only from the mother.

lations promulgated within the legitimate sphere of State administration are valid (*Dublino*, 413 U.S. at p. 22) so long as "they are not in violation of any specific provision of the Constitution or the Social Security Act" (*Dublino*, p. 423, footnote 29, *Jefferson* v. *Hackney*, 406 U.S. 535 at 541 (1972)). Nor did the Courts take into account the instruction of *Wyman* v. *James*, 400 U.S. 309 (1971) or *Charleston v. Wohlgemuth*, 332 F. Supp. 1175 (D.C. Penn. 1971) affd. 405 U.S. 970 (1972).

In *Wyman* v. *James*[18] this Court recognized that AFDC could be denied to a family unit for failure of the mother to permit a home visit by a social worker. The Court noted that the choice was entirely up to the welfare mother (400 U.S. at 324) and stated (400 U.S. at 325):

> "The only consequence of her refusal is that payment of benefits ceases. Important and serious as this is, the situation is no different than if she had exercised a similar negative choice initially and refrained from applying for AFDC benefits".

On March 6, 1972, the Court summarily affirmed *Charleston* v. *Wohlgemuth*, 405 U.S. 970 affg. 332 F. Supp. 1175 (D.C. Penn., 1971) in which the Court sustained a decision of a three-judge Court that regulations requiring AFDC applicants who owned certain types of real or personal property to agree as a condition of receiving assistance, to reimburse the Commonwealth for assistance received and to give a lien on the property as security did not conflict with the Federal Social Security Act. The Pennsylvania District Court had expressly stated that "The duty to execute the forms rests with the adults; the denial of benefits extends to the entire family unit" (p. 1181).

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[18] The home visitation requirement involved in *James* was held to be "within the legitimate sphere of State administration" *Dublino* (413 U.S. at 422).

So long as State action is within the "legitimate sphere of State administration" (*Dublino*, p. 422) there is no impediment to the State's denial of assistance to a family unit inclusive of the mother. NOLEO cases by reason of the express provisions of 42 U.S.C. § 602(a)(11) appear to preclude denial of assistance to the child but that statute does not operate for the benefit of the mother whose grant may be withheld.

True it is that the denial of assistance to the uncooperative mother as a practical matter operates to reduce the total grant of assistance to the family. There is, we submit, no "vice" involved in such result so long as the choice in bringing that result about rests upon the mother and not upon the State.[19]

B

New York, as well as the Congress, has a legitimate interest in obtaining support for deserted or abandoned children. The New York State Department of Social Services in a report entitled "Characteristics of A.D.C. Families in New York State, January 1971", dated September, 1972, based upon a sampling, found that in regular AFDC households[20] in 29% of the cases the father

[19] The Court below referred to House Report No. 1300 relating to the 1950 amendment of 42 U.S.C. § 606(b) as recognizing "the interdependency of provisions for and to the child and its caretaker mother" (J.S. 27) That "interdependency" is irrelevant to the case at bar in which the mother seeks to obtain AFDC "upon her own informational terms" (*Wyman* v. *James*, 400 U.S. at 321). In any event, it appears that the principal purpose of the 1950 amendment was to enable States which had been making provision for adult relatives to make payments "that are more nearly adequate" and to include such a relative "as a recipient for Federal matching purposes" (House Report No. 1300 of 1950, pp. 45-46).

[20] Not including ADC-U households where the father is not employed and is in the home. (New York's program is designated "ADC" rather than "AFDC")

had deserted the family, while in 28.9% of the cases the father was not married to the mother. These figures have been updated to January of 1973 and show that the desertion figure remained constant at 29% of the cases while the category of "father not married to mother" had increased to 42.4% of the cases.[21]

The 1972 report had stated: "Statewide, the place of residence of living ADC Regular fathers was not known to the caseworker in 56% of the cases; in 12% of the cases, the father was either in the home or in an institution, and in the remaining 32% the father's place of residence was outside the home or institution but known to the caseworker." The 1973 update closely parallels the 1971 figures.

It is estimated by the New York State Department of Social Services that the cost of the AFDC program to New York State for fiscal year 1974-75 will be in excess of $358 million. The cost of the program to the 64 local Social Service districts of the State will be approximately equal to the State figure with the Federal contribution amounting to approximately the combined total of the State and local expenditures. New York's interest in exploring and utilizing every possible means of obtaining support from such fathers is very real indeed.

This Court in *New York State Department of Social Services* v. *Dublino*, 413 U. S. 405 (1973) recognized that there are areas within the AFDC Program that are basic to that Program and in which a State as well as Congress has legitimate interests and that the "Court should not lightly interfere" where the State is attemping to assure

[21] The January 1973 figure included all ADC households including those in which an unemployed father is in the home.

that limited State welfare funds will be spent on behalf of those genuinely incapacitated and most in need or where the State is attempting to copy with fiscal hardships (413 U. S. at p. 413).

Congress inserted certain provisions in the Social Security Act in 1967 intended to aid the States in obtaining support from deserting and abandoning parents, but those additions (section 602-a[18][21] and [22]) did not, we submit, establish an "exclusive mechanism" for obtaining support from deserting and abandoning parents (413 U. S. at p. 411, footnote 9). If Congress had intended to establish an "exclusive mechanism" for obtaining support payments such "• • • intentions would in all likelihood have been expressed in direct and unambiguous language. No such expression exists, however, either in the federal statute or in the committee reports." (413 U. S. at p. 414.) Here no less than in *Dublino*, the act clearly "allows for complementary" programs and procedures to obtain support from a deserting or abandoning parent "even if they become conditions for continued assistance" (413 U. S. at p 422) or for any assistance.

CONCLUSION

The order appealed from should be reversed and New York Social Services Law, § 101-a (2) (3) should be declared valid and constitutional in all respects.

Dated: July 15, 1974

Respectfully submitted,

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APPENDIX A

Statutes of the United States

"42 U.S.C. § 602*

"(a) A State plan for aid and services to needy families with children must

• • •

"(7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income;

• • •

"(11) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent;

• • •

"(17) provide—

"(A) for the development and implementation of a program under which the State agency will undertake—

(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and

(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such

* 1973 pocket part, page 106 *et seq.*

support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

"(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A);

"(18) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State agency in administering the program referred to in clause (17)(A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan;

• • •

"(21) provide that the State agency will report to the Secretary, at such times (not less often than once each calendar quarter) and in such manner as the Secretary may prescribe—

"(A) the name, and social security account number, if known, of each parent of a dependent child or children with respect to whom aid is being provided under the State plan—

(i) against whom an order for the support and maintenance of such child or children has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 405 of this title,

"(B) the last known address of such parent and any information it has with respect to the date on which such parent could last be located at such address, and

"(C) such other information as the Secretary may specify to assist in carrying out the provisions of section 610 of this title;

"(22) provide that the State agency will, in accordance with standards prescribed by the Secretary, cooperate with the State agency administering or supervising the administration of the plan of another State under this part—

"(A) in locating a parent residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

"(B) in securing compliance or good faith partial compliance by a parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State;"

APPENDIX B

Brief in the District Court Concerning "Substantiality"

POINT I

PLAINTIFFS DO NOT RAISE A SUBSTANTIAL CONSTITUTIONAL QUESTION.

In what is an apparent recognition of the insubstantiality of their constitutional argument, plaintiffs have set such claim out as the second cause of action in their amended complaint while devoting the first cause of action to the pendent statutory question thus putting the cart before the horse. Of a certainty, however, it may be said that in the absence of a substantial constitutional claim this Court lacks jurisdiction to entertain this action (see Point II *infra*).*

Plaintiffs' equal protection argument, as set forth at page 9 of the complaint, is that:

> "Defendants' action in erecting an additional requirement of eligibility constitutes a denial of equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it creates an invidious and unjustifiable distinction. New York's action in this case requires that impoverished mothers institute and cooperate in proceedings against their children's fathers; no such requirement is imposed on the well-to-do. Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another. Classifications based on wealth have long been recognized as peculiarly obnoxious to the principles of equality enshrined in the Fourteenth Amendment."

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* It is at least questionable whether the Federal Constitution may be utilized to permit a mother to force an agency to provide her and her children with public assistance upon her own terms. *Cf. Wyman* v. *James*, 400 U.S. 309, at 321, 322 (1971).

Appendix B—Brief in the District Court Concerning "Substantiality"

The lack of substantiality of plaintiffs' constitutional contention will be demonstrated.

There is no compelling State interest which requires that the so-called "well-to-do" proceed against their children's fathers for support so long as such support is not required for their maintenance. The compelling State interest begins to appear when the child or mother is liable to become in need of public assistance or care (New York Family Court Act, § 415) or has been granted public assistance or care. The distinction here, if indeed there exists one, is entirely rational.

Plaintiffs further seek to show a "distinction" by claiming that "Marriages of the well-to-do are not driven asunder by forcing one spouse to prosecute another." Intervenor Stuck is the only party to this action who has made any factual allegations in the amended complaint. These, however, do not refer to a non-support action, but rather to determining the paternity of her youngest child, a state of facts which obviously does not arise out of a marital relationship. She lacks standing to make such an argument (*Cf.* following, *Doe* v. *Ellis*, 350 F. Supp. 375 [D.C. South Carolina, August 23, 1972]) and none of the named plaintiffs have made any factual allegations in the amended complaint in support of such an argument. While noting this fact, we point out, as to married plaintiffs, that implicit in their argument is the assumption that it is perfectly all right for the man to move out of the house for the purpose of gaining AFDC for his family. To say that the marriage is not already "asunder" would be to imply a fraudulent motive to the plaintiffs and to the fathers of their children. Plaintiffs' argument is specious on its face.

Appendix B—Brief in the District Court Concerning "Substantiality"

Plaintiffs' third attempt to establish a "distinction" is based on an argument that "Classifications based on wealth have long been recognized as peculiarly obnoxious • • •." Of course, this ground of attack must draw its viability from plaintiffs' other two alleged grounds of "distinction". Since those grounds are without viability perforce the entire argument falls in.

We are not dealing with a requirement that a criminal work off a sentence at the rate of $5 per day as in *Williams* v. *Illinois*, 399 U.S. 235, or a case in which some criminals are afforded a stenographic transcript of trial proceedings where others are not as in *Griffin* v. *Illinois*, 351 U.S. 12 (1955), or a case where a thief was subject to sterilization but an embezzler was not, as in *Skinner* v. *Oklahoma*, 316 U.S. 527, all cited by plaintiffs in their brief in the original case as support for their position. Rather, we are dealing with a classification which the Supreme Court of the United States itself has recognized, *i.e.*, "the poor and the needy" (*Jefferson* v. *Hackney*, 406 U.S. 535, at page 546).•

Plaintiffs have not presented a substantial constitutional argument.

As will be shown, Social Services Law, § 101-a(2)(3) serves a compelling State interest and has a rational basis.

• Cf. *Lascaris* v. *New York State Department of Social Services et al.*, 67 Misc. 2d 17, (Supreme Court, Special Term, Onondaga County, 1971) where the Court said (p. 22):

> "There would indeed be a 'double standard' if the mother acting under the terms of the Domestic Relations Law was required to make disclosure in order to get the assistance of the law, while the applicant for public assistance was required to give no information to help locate the father, and would still get the full benefit of the law."

Appendix B—Brief in the District Court Concerning "Substantiality"

The standard for distinctions made in allotting finite state public assistance payments is whether the classification created has a rational basis. In *Dandridge v. Williams*, 397 U.S. 471 (1970), the Supreme Court stated (397 U.S. at 485):

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 229 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical it may be and unscientific' *Metropolis Theater Co.* v. *City of Chicago*, 228 U.S. 61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan* v. *Maryland*, 366 U.S. 420, 426."

In *Jefferson* v. *Hackney*, 406 U.S. 535 (1972), the Supreme Court reaffirmed this standard and added (406 U.S. at 546-47):

> "A legislature may address a problem 'one step at at a time', or even 'select one phase of one field and apply a remedy there, neglecting the others' • • •"
>
> • • •
>
> "So long as its judgments are rational and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them."

See also *Hagans* v. *Wyman*, 471 F. 2d 347 (2d Cir., January 8, 1973) pet. cert. pending, where the Court said:

> "However it is not for us to evaluate the wisdom of of the states' choice of means. If these means are rationally related to a proper end • • • we have no power to go further." (p. 350)

One cannot deny the compelling interest of the State in enacting Social Services Law, § 101-a(2)(3) or the fact that it is reasonably calculated to accomplish the purpose of requiring legally responsible parents to support their dependents and to ease the State's burden in this regard.

Judge GURFEIN, writing in *Doe* v. *Lavine*, 347 F. Supp. 357, 362 (S.D.N.Y., 1972), although finding for the plaintiffs on statutory grounds in another NOLEO* case based upon different provisions of law, could not deny that "• • • It seems quite logical to pursue every means of requiring a putative father to support his child out of wedlock as a means of cutting the relief rolls • • •".

Judge BRIEANT in *Lewis* v. *Lavine*, ____ F. Supp. ____ (S.D.N.Y., December 20, 1972) in granting preliminary relief in a NOLEO case involving Social Services Law, § 101-a stated:

> "It would seem self-evident that a welfare recipient who has an estranged husband who has abandoned her support and the support of the children, or a father of her child, whose name she refuses to disclose, may thereby have financial resources the existence of which prevents her eligibility. She receives assistance on her own behalf, as well as in behalf of the child for whom she cares, 42 U.S.C. §§ 601, 606(b). Needs are

* Notice to Law Enforcement Officers.

the basis for public assistance, and relate to financial resources potentially available to the applicant from any source, including the obligation of a responsible relative, such as the father of a child, legitimate or otherwise. 42 U.S.C. § 602(a)(7).

"Such financial resources of a welfare applicant cannot be found, under the circumstances of this case, without the cooperation and assistance of the mother. The State of New York has a very real interest in fastening financial responsibility on the missing father. In New York City alone in 1971 there were 16,622 out of wedlock births to AFDC recipients. An estimated 70% of all children born to AFDC recipients are born out of wedlock (New York Times, March 21, 1972, p. 31, col. 1).

"It seems monstrous that the state officials, who are expending state resources as well as federal resources, are unable to fasten responsibility upon such persons, and they will be unable unless they can compel the recipient to cooperate and disclose the necessary information."

Indeed, the Social Security Act itself requires the State agency in determining need to take into consideration any other income and resources of any child or relative claiming aid to families with dependent children. See 42 U.S.C. § 602(a)(7).

That the statute has a rational basis and serves a compelling State interest is further demonstrated by the memorandum from the Assembly Rules Committee in support of Assembly No. 12216 of 1972, which became chapter 687 of the Laws of 1972. That memorandum said:

Appendix B—Brief in the District Court Concerning "Substantiality"

"MEMORANDUM IN SUPPORT

"AN ACT to amend the social services law and the penal law, in relation to paternity and support proceedings against deserting parents.

"PURPOSE OF THE BILL: This bill amends section 101-a of the social services law by requiring a recipient parent or spouse, or the social services official, to file a petition for support against the deserting father or spouse. It also amends section 372-a to require added information to be filed with the Central Registry for Location of Deserting Parents and amends section 260.05 of the penal law to prevent the mere seeking of public assistance constituting a defense for non-support.

"JUSTIFICATION FOR THE BILL: In January 1972, the state had over 350,000 dependent children families on public assistance representing a 12-month increase of almost 18,000 families the great percentage of which were deserted by fathers.

"Existing law permits mothers, relatives and social service officials to find and collect support from these deserters. The 1971 department of social services report states that some 2,000 such fathers were found. The annual public assistance payments on behalf of these families is in excess of $1.2 billion—out of which it has been estimated that $19.5 million will be collected.

"Federal law requires the states to find and collect from these fathers and this bill will strengthen the state's plan of implementation.

"FISCAL IMPLICATIONS: Considerable savings would be realized if the above bill were implemented."